

NTSB Order No. EA-4433

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 22nd day of February, 1996

Respondent .

Docket SE-13612

Respondent has appealed from the oral initial decision Administrative Law Judge William A. Pope, II, rendered in this proceeding on June 28, 1995, at the conclusion of an evidentiary hearing that took place on June 15 and 28, 1995.¹ By that decision, the law judge affirmed an order of the Administrator

¹An excerpt from the hearing transcript containing the initial decision is attached. Respondent has filed an appeal brief, to which the Administrator has replied.

alleging that respondent violated sections 61.3(e)(1) and 91.13(a) of the Federal Aviation Regulations ("FAR," 14 CFR Parts 61 and 91),² by operating an aircraft under Instrument Flight Rules (IFR) without holding an instrument rating, and that, during the same flight, respondent "experienced difficulty navigating the aircraft and had to declare an emergency."³ Administrator's Order of Suspension (complaint) at 2. Nevertheless, the law judge reduced the suspension period from

²The pertinent regulations state, as follows:

§ 61.3 **Requirement for certificates, rating, and authorizations.**

(e) Instrument rating. No person may act as pilot-in-command of a civil aircraft under instrument flight rules, or in weather conditions less than the minimums prescribed for VFR flight unless -

(1) In the case of an airplane, he holds an instrument rating or an airline transport pilot certificate with an airplane category rating on it.

§ 91.13 **Careless or reckless operation.**

(a) Aircraft operations for the purpose of air navigation. No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

³There is an apparent typographical error in the Administrator's complaint, in that, although clearly discussing FAR section 61.3(e)(1), the Administrator cites section "61.3(a)(1)." The law judge, in reliance on the complaint, made the same reference in the initial decision. In his reply brief, the Administrator acknowledged the misprint, but notes that the oversight caused no prejudice to respondent. We agree. Respondent has not objected and, in fact, also referred to "61.3(a)(1)" in his appeal brief. In addition, section 61.3(a) contains no subsections. Therefore, we amend, nunc pro tunc, the references to section 61.3(a) in the initial decision and the complaint to 61.3(e)(1).

120 to 60 days.⁴ Upon review of the record and the briefs of the parties, we deny respondent's appeal and adopt the findings and conclusions of the law judge.

The facts of this case are amply chronicled in the initial decision; we will not repeat them here. Instead, we turn directly to respondent's arguments. Respondent contends that the law judge erred in finding that he was the pilot-in-command (PIC) of the subject flight.⁵ He claims that the combination of his lack of confidence in his flying abilities and the vast aviation experience of his passenger, Mr. Saker, as well as respondent's practice to pay for all flight expenses when they flew together evidences a tacit understanding between the two men that "placed responsibility for the flight and the safety of the plane with Saker...." Respondent's brief at 14. Our review of the record, however, reveals that sufficient evidence was presented to support the law judge's conclusion that respondent was the PIC of the January 23, 1993 flight. He found the following facts, taken as a whole, to be significant indicators that respondent acted as the PIC: respondent was the owner of the aircraft; he sat in the left seat; he handled the controls and radio communications; he decided the details of the flight; he had the power to return to more favorable weather conditions if he so chose; he logged the

⁴The Administrator did not appeal the reduction in sanction and we do not address this issue.

⁵The pilot-in-command is "the pilot responsible for the operation and safety of an aircraft during flight time." 14 C.F.R. § 1.1.

entire flight time in his logbook as PIC; there was no agreement between respondent and his passenger, Bill Saker, that Mr. Saker would act as PIC and assume the ultimate responsibility for the flight; and respondent unilaterally made the decision to declare an emergency.

To support his argument, respondent relies solely on Administrator v. Rajaratnam, NTSB Board Order No. EA-3497 (1992), where the Board found that the respondent, a student pilot certificate holder, had not acted as PIC, even though he owned the aircraft, sat in the left seat, operated the controls, and undertook the radio communications. In that instance, the Board found that the pilot in the right seat, a more experienced, private pilot certificate holder, was the PIC. However, the facts in Rajaratnam differ from those of the instant case in several significant ways. Mr. Rajaratnam knew that, as the holder of a student pilot certificate, he was not permitted to act as PIC of a passenger-carrying flight and did not log the flight time as PIC. In the instant case, respondent, a private pilot certificate holder with, as of January 1993, about 1,000 hours of flight time, logged the entire flight time as PIC.

Also, in Rajaratnam, the more experienced pilot testified that he would have taken over if they had encountered an emergency, and, on at least some of the prior flights that the two pilots had taken together, they had expressly agreed that the more experienced, private pilot certificate holder would be the PIC of the flight. In the instant case, respondent and Mr. Saker

made no such agreement. When respondent encountered trouble, he, without deferring to Mr. Saker, declared an emergency. Mr. Saker did not assume command and control of the aircraft.

The law judge properly analyzed Rajaratnam and other relevant case law in rendering his decision. See, e.g., Administrator v. McCartney, 4 NTSB 925 (1983).⁶ We find that he had sufficient factual basis to conclude that "Saker did not possess the ultimate decisional authority for control or direction of the flight even in IFR conditions." Initial Decision at 579.

Respondent also argues that, even if he did act as PIC, he did not act in a careless manner, and should not be found to have violated FAR section 91.13(a). Again, we find there is ample evidence in the record to support the law judge's finding that respondent operated an aircraft under IFR conditions when he did not have an IFR rating and that this action was careless, potentially endangering the lives and property of others.

⁶In McCartney, we stated,

the mere fact that a pilot who does not hold a license at the time of a flight (such as respondent) ascertains that some other person in the plane is a rated pilot does not make the other person the pilot-in-command. Rather, the pilot-in-command is the individual who has overall responsibility for, and control of, a flight.

Id. at 926. See also Administrator v. Field, 4 NTSB 512, 513 (1982), where the respondent was found to have acted as PIC. He was in the right seat acting as safety pilot and practicing as a flight instructor, while the pilot in the left seat manipulated the controls and handled the radio communications, but the respondent took over the radio when he thought they had encountered a problem.

In sum, the law judge properly evaluated the facts, analyzed the relevant case law, and determined that respondent acted as PIC during the subject flight. We have been presented with no reason to overturn his decision.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The initial decision is affirmed; and
3. The 60-day suspension of respondent's private pilot certificate shall begin 30 days after service of this order.⁷

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT and GOGLIA, Members of the Board, concurred in the above opinion and order.

⁷For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR § 61.19(f).